

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

DAVID M. HARKEY

CIVIL ACTION NO. 5:14-cv-3357

VS.

SECTION P

JUDGE S. MAURICE HICKS

MICHAEL S. JONES

MAGISTRATE JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Pro se plaintiff David M. Harkey, proceeding in forma pauperis, filed the instant civil rights complaint pursuant to 42 U.S.C. §1983 on December 2, 2014. When he filed the complaint, plaintiff was a detainee in custody at the Caddo Parish Correctional Center awaiting trial on felony charges. He sued Shreveport Police Officer Michael Jones claiming that he “did not get up to date info on [the alleged victim’s] medical info or on me nor did he follow up and see if [victim] was telling the truth nor did he ask any questions that may prove me innocent.” He also claimed that Jones “... lied in the narrative supplement report as well as my search warrant and altered statement as well...” He demanded that the pending charges be dismissed or dropped to a less serious offense and that he be awarded compensatory damages of \$100,000. This matter has been referred to the undersigned for review, report and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court.

Law and Analysis

On January 29, 2015, an initial review was completed and plaintiff was ordered to amend his complaint within 30 days to provide the factual basis for his claims. [Doc. 5] Plaintiff has not responded to the order, nor has he contacted the Court since December 2, 2014, when he filed his

complaint and application to proceed *in forma pauperis*. Federal Rules of Civil Procedure Rule 41(b) permits dismissal of claims “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order...” The district court also has the inherent authority to dismiss an action *sua sponte*, without motion by a defendant. *Link v. Wabash R.R.Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 1388-89, 8 L.Ed.2d 734 (1962). “The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the [d]istrict [c]ourts.” *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir.1988). The undersigned evaluated the original complaint pursuant to 28 U.S.C. §§1915 and 1915A and directed petitioner to amend and provide the information needed to further evaluate plaintiff’s claims. Plaintiff has disregarded the order to amend.¹

Therefore,

IT IS RECOMMENDED that plaintiff’s civil rights complaint be **DISMISSED**

¹ It is unclear whether dismissal at this time will result in the complete forfeiture of plaintiff’s claims should he desire at some later date to pursue them. Nevertheless, dismissal at this juncture would still be appropriate even if it ultimately “deprives the litigant of the opportunity to pursue his claim.” *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1190 (5th Cir. 1992) (internal quotations omitted). Dismissal with prejudice for failure to prosecute or to comply with a court rule or order is warranted where “a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interests of justice.” See *Millan v. USAA General Indem. Co.*, 546 F.3d 321, 325 (5th Cir. 2008) (citations and internal quotation marks omitted). In addition, the Fifth Circuit generally requires the presence of at least one of three aggravating factors: “(1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct.” *Id.*

The undersigned finds that the requirements for a dismissal with prejudice are satisfied in this case. As previously noted, plaintiff has submitted an inadequate pleading; he was instructed to amend to provide factual support for his conclusory claims; however, he has failed to do so within the time limitation provided. As noted above, the order did not seek a legal brief on plaintiff’s part; indeed, the amend order directed him to provide only **FACTS** and still plaintiff has refused to comply.

WITHOUT PREJUDICE for failure to prosecute in accordance with the provisions of FRCP Rule 41(b).

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error.

See, Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Monroe, Louisiana, April 20, 2015.



KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE